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Attorney for Plaintiff Carolyn Wesley

## UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN WESLEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No:

COMPLAINT OF CAROLYN WESLEY  
AGAINST THE UNITED STATES OF  
AMERICA

COMES NOW Plaintiff, Carolyn Wesley, by and through her attorneys, and for her complaint against United States of America, and alleges as follows:

## JURISDICTION

1. This is a claim for damages arising out of personal injuries occurring on January 5, 2005, sustained on real property owned, operated and/or managed by The United States of America, a party defendant herein, in the City and County of San Francisco, California. This court has jurisdiction of this matter pursuant to 28 USC §1346(b)(1).

## FEDERAL TORT CLAIM

2. Plaintiff Carolyn Wesley submitted her claim for damages to the United States Government Services Administration, GSA Pacific Rim Region, on November 12, 2006. The claim was rejected on July 31, 2007.

PARTIES

3. Plaintiff Carolyn Wesley (WESLEY or PLAINTIFF), is a resident of the State of California.

4. On information and belief, The United States of America (UNITED STATES), is the owner of certain real property located at the corner of 7<sup>th</sup> and Mission Streets, in the City and County of San Francisco, California, to wit the United States Court of Appeals courthouse.

DEMAND FOR JURY TRIAL

5. WESLEY demands trial by jury.

GENERAL ALLEGATIONS

6. Adjacent to the United States Court of Appeals courthouse, on the Seventh Street side, there are trees that are planted curb side. On information and belief, at all times alleged here in, the trees around United States Court of Appeals courthouse, including those planted curbside, are and were owned, managed and/or controlled by Defendant UNITED STATES. On information and belief, at all times alleged here in, Defendant UNITED STATES owned, managed and/or controlled the side walks around the United States Court of Appeals courthouse at Seventh and Mission Streets.

7. On January 5, 2005, at or about 11:00 p.m., Plaintiff was walking in a southerly direction on Seventh Street toward Mission Street, on the sidewalk adjacent to the United States Court of Appeals courthouse. Notwithstanding Plaintiff being observant and mindful, Plaintiff stepped into the space of a sidewalk grate that surrounds the sidewalk trees. On information and belief, the tree had been removed. There were no warning signs or devices position at or near the hole in the grate. There was no cover over the hole in the grate. Plaintiff's foot went into the hole causing her to fall face forward without warning or anticipation or the opportunity to brace herself for the fall or impact. Plaintiff struck the sidewalk with her face, head and other parts of her body causing grave and serious injuries.

FIRST CAUSE OF ACTION  
NEGLIGENCE

8. WESLEY, incorporates by this reference paragraphs 1 through , inclusive, as though fully set forth.

9. Defendant UNITED STATES, as the possessor of real property, is responsible, not only for the result of its willful acts, but also for an injury occasioned to another by its want of ordinary care or skill in the management of its property.

10. Defendant UNITED STATES did breach its duties of care to Plaintiff by among other things failing to investigate and discover defects in and about the property, failing to warn of defects in and



1 about the property, failing to repair or correct defects in and about the property, and failing to mitigate  
2 the dangerous condition by covering and/or filling the hole caused by the missing tree.

3 11. Defendant UNITED STATES had actual or in the alternative constructive notice of the existence  
4 of the defect / dangerous condition sufficient time prior to Plaintiff's injuries to have corrected said  
5 defect / dangerous condition.

6 12. On January 5, 2005, Plaintiff stepped into the hole where the tree had been, falling face first to  
7 the sidewalk.

8 13. Plaintiff's fall is and was as a direct and legal consequence of Defendant's breach of its duties to  
9 Plaintiff.

10 14. Plaintiff sustained injury and damage as a consequence of her fall, some of which are continuing.

WHEREFORE, Plaintiff WESLEY, prays for relief as follows:

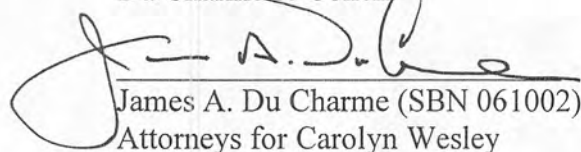
11 A. General and Special Damages, according to proof

12 B. Costs and expenses incurred herein; and

13 C. Such other and further relief as the Court deems proper.

14 Dated: September 10, 2007

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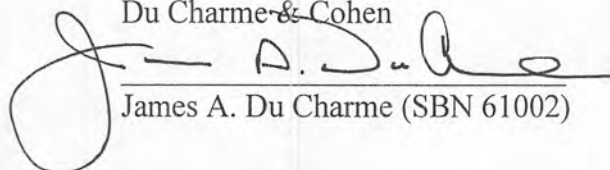
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16 James A. Du Charme (SBN 061002)  
17 Attorneys for Carolyn Wesley

18 CERTIFICATE OF COUNSEL

19 The undersigned certifies to the best of his knowledge, information and belief, upon reasonable  
20 inquiry under the circumstances, the facts and circumstances alleged in Carolyn Wesley's Complaint are  
21 a reasonable basis for the Complaint and prayer for damages against Defendant.

22 Dated: September 10, 2007

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